



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10458 OF 2018

1. Yeshwanta s/o Yogaji Borade,
Age : 52 years, Occ : Agri,
R/o : Bhendegaon, Tq. Basmathnagar,
Dist. Hingoli
2. Balaji s/o Yogaji Borade
Age : 62 years, Occ : Agri,
R/o : As above
3. Navnath s/o Balaji Borade
Died Through LRs
- 3A. Seema w/o Navnath Borade,
Age 38 yrs. Occ. Household,
R/o. Bhendegaon,
Tq. Vasmathnagar, Dist. Hingoli.
- 3B. Sneha d/o Navnath Borade,
Age 17 yrs. Minor u/guardianship of real mother,
Seema w/o Navnath Borade,
R/o. As above.
- 3C. Sapna d/o Navnath Borade,
Age 15 yrs., Minor u/guardianship of real Mother,
Seema w/o Navnath Borade,
R/o. As above.
- 3D. Sumit s/o Navnath Borade,
Age 13 yrs, Minor u/guardianship of real Mother,
Seema w/o Navnath Borade,
R/o. As above.

4. Pandurang s/o Balaji Borade,
Age : 37 yrs, Occ : Agri,
R/o- As above.
5. Jijabai w/o Madhavrao Vyawhare,
Age : 57 yrs, Occ : Agri,
R/o- As above

.... **Petitioners**
(Ori. Plaintiffs)

Versus

1. Drupati d/o Laxman Khandare,
Age : 37 yrs, Occ : Pvt. Service,
R/o : Ambedkar Nagar, Basmathnagar
Tq. Basmathnagar, Dist- Hingoli.
2. Baban s/o Chimaji Khandare,
Age : 37 yrs, Occ- Pvt. Service,
R/o : Bhendegaon, Tq. Basmathnagar,
Dist- Hingoli.

.... **Respondents**
(Ori. Defendants)

WITH

WRIT PETITION NO. 1582 OF 1990

1. Balaji s/o Yougaji,
Age : 40 years, Occ : Agriculture,
R/o : Bhendegaon, Tq. Basmath,
Dist. Parbhani
2. Yeshwanta s/o Yougaji,
Age : 35 years,
3. Jijabai w/o Madhavrao,
Age : 34 years,
All Occupation : Agriculturist and

R/o : Bhendegaon, Tq. Basmath,
Dist. Hingoli

.... **Petitioners**

Versus

- 1 Kalabai w/o Laxman Khandare,
Died Through LRs

Drupati w/o Laxman Khandare,
Age : 36 years, Occ : Household,
R/o : Bhendegaon, Tq. Basmath,
At present R/o Abedkar Nagar,
Basmathnagar, Tq. Basmathnagar,
Dist. Hingoli

- 2 Chimaji s/o Nagoji Khandare
Died Through LRs

Baban s/o Chimaji Khandare
Age : 35 years, Occ : Agri,
R/o : Bhendegaon, Tq. Basmath,
Dist. Hingoli

3. The State of Maharashtra Through
Tahsildar, Basmathnagar

.... **Respondents**

WITH

WRIT PETITION NO. 1402 OF 1998

1. Balaji s/o Yogaji Borade
Age : 62 years, Occ : Agri,
2. Yeshwanta s/o Yogaji Borade,
Age : 52 years, Occ : Agri,

3. Jijabai w/o Madhavrao Vayaware,
Age : 61 years, Occ : Agri,
All R/o : Bhendegaon, Tq. Basmathnagar,
Dist. Parhani

.... **Petitioners**
(Ori. Respondents No. 1 to 3)

Versus

1. Laxman s/o Nagoji Khandare
Died Through LRs
- a) Kalabai w/o Laxman Khandare
Age : 35 years, Occu : Labourer,
R/o : Bhendegaon, Tq. Basmathnagar,
Dist. Parhani
- b) Durpati d/o Laxman,
Minor U/g Resondent No. 1 Kalabai
2. Chimnaji s/o Nagoji Khandare, Died L.Rs.
- a) Kishanbai w/o Chimnaji Khandare,
Age : 40 years, Occu : Agri..
- b) Baban s/o Chimnaji Khandare,
Age : 16 years, Minor U/G of Mother
Krishnabai w/o Chimnaji Khandare,
3. Rukhmabai w/o Nagoji Khandare, Died
All R/o: Bhendegaon, Tq. Basmath,
District: Parbhani.
4. Mirza Asadullah Baig s/o Mirza Ibrahim Baig,
Age : Major, R/o: Bhendegaon Tq. Basmath
(Now at present Hyderabad (A.P.))
5. Rama s/o Ashruba Gaware,
Age : 57 years, Occu : Agriculture,
R/o: Bhendegaon, To: Basmath, District: Parbhani.

6. Yogaji s/o Balaji Borade, Died L.Rs.
- a) Dhondabai w/o Yogaji Borade,
Age: 60 years, Occu : Household,
R/o. Bhendegaon, To: Basmath, District: Parbhani.
- b) Kashibai w/o Balaji Shivarkar,
Age: 30 years, Occu: Household.
- c) Kamalabai w/o Govindrao
Age: 40 years, Occu: Househole,
R/o: Ardhapur, To: Nanded,
District: Nanded.
7. Maharashtra Revenue Tribunal,
Aurangabad.

.... Respondents
(Res. No. 1, 2 and 3 ori. Applicants)

WITH
CIVIL APPLICATION NO. 2014 OF 2020
IN WP/1402/1998

Advocate for Petitioners : Mr. P. R. Katneshwarkar i/b Mr. S. P. Katneshwarkar

Advocate for Respondents : Mr. Milind Joshi

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 28 FEBRUARY, 2025

PRONOUNCED ON : 08 MAY, 2025

JUDGMENT :

1. The subject matter in all these writ petitions is a land situated at village Bhendegaon, Tq. Basmathnagar, Dist. Parbhani in Sy. No. 72/1 ad-measuring 19A-9G, originally owned by one Mirza Asadulla Baig. Owing to various proceedings filed in relation to the subject land and commonality of the subject matter, the three writ petitions are clubbed together, though challenging orders arising out of different proceedings.

WRIT PETITION No. 1582 OF 1990

2. The case of the petitioners in this writ petition is that, the owner of the said land Mirza Asadulla Baig, was residing at Hyderabad and the land was cultivated by his servant namely Nagu Mahadya Khandare. Mirza Asadulla Baig sold 19A - 9G land from Sy. No. 72/1 on 04.09.1973 to one Rama Asraji. Thereafter, the heirs of the Rama Ashruba sold this portion to the petitioner No. 2 i.e. Yashwanta Yogaji in the year 1977. It is claimed that Nagu who was the servant of land owner Mirza Asadulla Baig, was a witness to the registered sale-deed, which was executed in favour of Rama Asraji. On the basis of sale-deed which is executed in the year 1977, the present petitioners are claiming to be owner and possessor of land in Sy. No. 72/1.

3. It is contended by the petitioners that after the death of Nagu, who was servant of original land holder, his legal heirs were dispossessed and hence, they have filed an application before the Naib Tahsildar, Basmathnagar, bearing Case No. 75/TNC/32(1)/2 for possession of land under Section 32(1) of the Hyderabad Tenancy and Agricultural Land Act, on the ground that their ancestor Nagu was a protected tenant, and after his death, they have been dispossessed by Rama Ashruba and Yogaji Balaji in collusion with the owner Mirza Asadulla Baig. The proceedings were instituted in the Court of Naib Tahsildar (Revenue), Basmathnagar on 18.03.1975. After considering the rival contentions, the Naib Tahsildar has allowed the application of the legal heirs of Nagu vide judgment and order dated 16.04.1979, with a direction to restore the possession of the land in Sy. No. 72/1 ad-measuring 19A-9G situated at village Bhendegaon, Tq. Basmath to the applicants.

4. The judgment and order passed by the Naib Tahsildar was challenged by Yogaji i.e. father of petitioners No. 1 and 2 before the Deputy Collector (Land Reforms), Parbhani. The appeal was dismissed by the Deputy Collector vide judgment and order dated 31.01.1981. Yogaji further challenged the said decision in Revision Application before the Maharashtra Revenue Tribunal, Aurangabad

(hereinafter “MRT” for short) which was numbered as Case No. 78/B/82/Parbhnai. The Revision Application was also dismissed by Member, MRT dated 24.02.1984 the ground of delay and laches, thereby confirming the order passed by the Naib Tahsildar dated 16.04.1979. The order passed by Member, MRT was further challenged in Writ Petition No. 464 of 1984 before this Court which was also dismissed by this Court vide dated 27.08.1984.

5. It is the contention of the petitioners that when they got the knowledge about the order passed by the Naib Tahsildar dated 16.04.1979, having realised the effect of the order, which was against their interests, they have challenged the order of Naib Tahsildar before the Deputy Collector, Parbhani. After hearing the respective parties, the Deputy Collector has allowed the appeal filed by the petitioners by setting aside the order of Naib Tahsildar, vide judgment and order dated 13.11.1987. It is the contention of the petitioners that this order of the Deputy Collector, setting aside the earlier order passed by the Naib Tahsildar dated 16.04.1979, has attained the finality as it has not been challenged.

6. It is further contended that inspite of the order passed by the Deputy Collector dated 13.11.1987, the Tahsildar issued a communication dated 09.12.1988 directing the Revenue Inspector to

hand over the possession of the disputed land to the legal heirs of protected tenant Nagu. Accordingly, the Revenue Inspector has prepared a panchnama dated 12.12.1988 stating that the possession of the land has been restored to the legal heirs of Nagu who was a protected tenant.

7. Against the conduct of the Revenue Officer, the petitioners had challenged the order before the Collector in Revision Application. The revision application has been decided by the Collector on 07.05.1990, thereby dismissing the Revision application on the ground that the order of Naib Tahsildar, dated 16.04.1979 has been confirmed by the Hon'ble High Court. Therefore, grant of the prayer of the petitioners would amount to questioning the decision of the High Court.

8. Being aggrieved by the order passed by the Collector on 07.05.1990, the petitioner have approached this Court under Article 227 of Constitution of India. Though it is claimed by the petitioners in the averment in the memo of writ petition that, they are challenging the order passed by the Collector on 07.05.1990, however, in the prayer clause, following prayer is made by the petitioners which read thus :-

“A By allowing this writ petition, Your Lordships would be

pleased to set aside the directions issued by the Tehsildar to the Revenue Inspector to hand over possession to the heirs of Nagy and the paper panchnama which was made by the Inspector.”

9. From the prayer made in the writ petition, it is evident that challenge is to the directions issued by the Tahsildar to the Revenue Inspector to hand over the possession to the legal heirs of Nagu and the paper panchnama which was made by the Revenue Inspector. The order passed by the Collector is challenged on the following grounds :-

1. The order dated 16.04.1979 passed by the Tahsildar is not binding on petitioners since they were not party to the proceedings before the Naib Tahsildar.
2. The right of the petitioners did not flow from their father Yogaji, since they have independently purchased the said properties.
3. The order dated 13.11.1987 passed by Deputy Collector restoring the possession of the land to the petitioners has attained the finality since it is not challenged by any of the respondents.
4. It is claimed by the petitioners that they are claiming the right over the lands independently since they have purchased the said property, by executing sale-deeds. Therefore, the respondents could not have filed proceedings for possession of land under Section 32(1) of the Hyderabad Tenancy and Agricultural Lands Act.
5. The only remedy available to them was to invoke Section 98 of the Hyderabad Tenancy and Agricultural Lands Act.

WRIT PETITION NO. 1402 OF 1998

10. Simultaneously, the same set of petitioners have filed proceedings challenging the judgment and order dated 16.04.1979 passed by Naib Tahsildar, Parbhani as well as the order dated 08.12.1997 passed by Member, Maharashtra Revenue Tribunal, Aurangabad. Since the facts in Writ Petition No. 1582 of 1990 and the present writ petition are same, in order to avoid repetition, those are not reproduced.

11. The Naib Tahsildar has allowed the application of respondents for restoration of possession by order dated 16.04.1979. The challenge to the order by Yogaji Balaji in appeal before the Deputy Collector (Land Reform), Parbhani, was dismissed. Even the Revision Application preferred before the MRT, Aurangabad has been dismissed vide its judgment and order dated 24.02.1984. The challenge to the order passed by the Member, MRT in a Writ Petition No. 464 of 1984, filed before this Court has also failed.

12. Being aggrieved by the order passed by the Naib Tahsildar dated 16.04.1979, the petitioners filed an Appeal before Deputy Collector (Land Reforms), Parbhani, after they got the knowledge about the said order. The Deputy Collector allowed the appeal filed by the petitioners vide judgment and order dated

13.11.1987. The respondents No. 1 to 3 have challenged the order of Deputy Collector before MRT, Aurangabad wherein the Member, MRT, has been pleased to allow the Revision application and set aside the judgment and order passed by the Deputy Collector dated 13.11.1987.

13. Hence, being aggrieved and dissatisfied with the judgment and order dated 08.12.1997 passed by Member, MRT, the petitioners have approached this Court under Article 227 of Constitution of India.

WRIT PETITION NO. 10458 OF 2018

14. One more writ petition has been clubbed with the above two writ petitions. In this writ petition, the petitioners have challenged the order passed by the District Judge – 1, Basmathnagar in Misc. Civil Appeal No. 3 of 2015, dated 06.06.2018, to the extent of rejection of their prayer for grant of temporary injunction in respect of land Sy. No. 72/1, ad-measuring 7H – 78R situated at village Bhendegaon, Tq. Basmathnagar, Dist. Hingoli. This writ petition is filed by the petitioners i.e. No. 1 Yeshwanta Yogaji Borade, No. 2 Balaji Yogaji Borade, No. 3 Navnath Balaji Borade (Died) Through his Legal Representative, No. 4 Pandurang Balaji Borade and No. 5 Jijabai Madhavrao Vyawhare against respondent No. 1

Druptati Laxman Khandare and No. 2 Baban Chimaji.

15. The petitioners had filed the suit against the respondents i.e. original defendants seeking relief of declaration of ownership along with prayer for perpetual injunction in respect of land Gat No. 134 (Sy. No. 72/1 and 72/2) ad-measuring 13H - 62R situated at village Bhendegaon, Tq. Basmathnagar, Dist. Hingoli. In the pending suit, the petitioners had filed an application seeking temporary injunction in respect of suit land below Exh. 5, which came to be rejected by the Jt. Civil Judge Junior Division, Basmathnagar on 02.01.2015.

16. Being aggrieved by the said order, the petitioners filed M.C.A. No. 3 of 2015 before the District Judge – 1, Basmathnagar. After hearing the parties, the said appeal was partly allowed by the Appellate Court vide judgment dated 10.05.2016 granting interim injunction only in respect of land Sy. No. 72/2 i.e. western side portion of land Gat No. 134 ad-measuring 14A – 17G till the disposal of the suit. Since the prayer to the extent of injunction in respect of land Sy. No. 72/1 was rejected, the petitioners filed Writ Petition No. 8863 of 2016. The said writ petition was decided by this Court on 01.02.2018, by remanding the matter back to the Appellate Court with a direction to decide the M.C.A. No. 3 of 2015, as expeditiously

as possible, with a further direction not to create third party interest or charge on the land Sy. No. 72/1. After the remand, the M.C.A. No. 3 of 2015 has been decided by the Appellate Court rejecting the application vide judgment and order dated 06.06.2018. It is this order which has been impugned in the present writ petition.

17. The learned Senior Advocate Mr. P. R. Katneshwarkar appearing for the petitioners in all the three writ petitions submits that the petitioners have challenged the order of Tahsildar dated 16.04.1979, before the Deputy Collector (Land Reforms), Parbhani in Case No. 85/TNC/32(1)/67 and it has been allowed in favour of the petitioners by order dated 13.11.1987. It is contended that though the Appellate Court has placed much reliance upon the panchnama and taba-pavti dated 12.12.1988, on the basis of which it is claimed that possession of 7H – 78R land from Sy. No. 72/1 was handed over to the heirs of Nagu, but the fact remains that legal heirs of Nagu had filed an application on 16.12.1988 for entering their names in the cultivation column of land Sy. No. 72/1. The application filed by the respondents has been rejected by the Tahsildar vide order dated 01.06.1992, by recording elaborate reasons.

18. Though it is claimed by the respondents that suit land was handed over to the legal heirs of Nagu on 12.12.1988 by the

Tahsildar and a *taba-pavti* was also executed, it is totally incorrect and false. Therefore, the panchnama dated 12.12.1988, deserves to be quashed and set aside.

19. When the Tahsildar had directed enquiry before handing over the actual possession of the land Sy. No. 72/1, it transpired that the land was never handed over to the heirs of the deceased Nagu. Hence, it was held that the possession of land Sy. No. 72/1 was never handed over to the heirs of Nagu by the Tahsildar in his order dated 01.06.1992 and 24.04.1998.

20. It is further urged that in fact, the entire process of allegedly handing over the possession to the heirs of deceased Nagu is under challenge before this Court in Writ Petition No. 1592 of 1990. Hence, on the background of aforesaid facts, it is contended that the order passed by the Appellate Court to the extent of rejection of the M.C.A. No. 3 of 2015 in respect of land Sy. No. 72/1 is illegal, arbitrary and perverse. Therefore, it is prayed that the order passed by District Judge – 1, Basmathnagar in M.C.A. No. 3 of 2015 dated 06.06.2018, be quashed and set aside.

21. Learned Senior Advocate for the petitioners further submits that the impugned order passed by the Naib Tahsildar,

Parbhani dated 16.04.1979, is illegal and bad in law for the reason that application filed by the respondents under Section 32(1) of the Act itself was not maintainable. The proceedings filed for recovery of possession against third party under Section 32(1) of the Act are not maintainable; Recovery of possession can be claimed only against the land owner under Section 32(1) of the Act. Therefore, the order passed by the Naib Tahsildar in proceedings which was not maintainable, is not sustainable.

22. It is the contention of the learned Senior Advocate that the proceedings under Section 32(1) of the Hyderabad Tenancy and Agricultural Land Act can be filed, only if the tenant is declared as a protected tenant of the suit land. According to him, neither Nagu nor his legal heirs were declared as protected tenant of the suit land by the Competent Authority. Therefore, even on this count, the proceedings initiated by them, invoking Section 32(1) of the Act were not maintainable. The petitioner have relied on the authoritative pronouncement of this Court in case of **Kerba Bhivaji Shinde and Ors. Vs. Salubai w/o Nagorai [1983(2) Bom. C. R. 606]**.

23. The next ground raised by the petitioners is that the Naib Tahsildar is not empowered to decide, whether a person is a Protected Tenant in proceedings under Section 32(1) of the Act. It is

his contention that proceedings under Section 32(1) of the Act does not empower the 'Naib Tahildar' to decide the status of a tenant. For seeking declaration as a Protected Tenant, proceedings are required to be initiated under Section 8 of the Act. The Tahsildar, after holding due enquiry, is empowered to decide whether a person is a protected tenant of the land. It is, therefore, contended that the order by the Naib Tahildar on 16.04.1979, under Section 32(1) of the Act is without jurisdiction.

24. Though the order passed by the Naib Tahsildar dated 16.04.1979 was challenged before the Deputy Collector (Land Reforms), Parbhani as well as MRT, Aurangabad by Yogaji Balaji, the same would not operate as *res judicata* against the petitioners, since the petitioners were not party to the said proceedings. Admittedly, their predecessor-in-title Rama Ashruba was party, he did not pursue the proceedings further since he had already sold the land to the present petitioners by way of registered sale-deed.

25. It is further contended that, while rejecting the Revision Application filed by Yogaji Balaji, the challenge has been turned down on the ground of limitation which has been confirmed by this Court. Therefore, neither the MRT nor this Court has dealt with the merits of the case. Hence, the theory of 'merger' would not be

applicable to the case in hand. In support of his contention, reliance is place on the reported judgment of the Hon'ble Supreme Court in case of **Chandi Prasad and Others Vs. Satish Prasad and Others [(2004)8 SCC 724]**.

26. It is submitted by the learned Senior Advocate that the order passed by the Naib Tahsildar itself is without jurisdiction. Hence, the decision rendered, subsequently are nullity, therefore the subsequent orders confirming the said order, would not be a valid orders that would bind the petitioners. An erroneous decision in a former suit or proceeding would not operate as *res judicata* in a subsequent suit or proceedings between the same parties, even where, the issue raised in the second suit or proceeding which is directly and substantially the same which was raised in the earlier suit or proceeding.

27. According to him, the Naib Tahsildar has rendered erroneous decision, which is not binding on them and the petitioners are entitled to challenge it. In support of his submissions, reliance is placed on the reported judgment in the case of **Mathura Prasad Bajoo Jaiswal and Ors. Vs. Dossibai N. B. Jeejeebhoy [(1970)1 SCC 613]** as well as judgment in **Canara Bank Vs. N. G. Subbaraya Setty and Anr. [(2018)16 SCC 228]**.

28. It is further submitted that Nagu or his legal representatives were never declared as Protected Tenant by the competent Authority. In order to declare them as a Protected Tenant, an enquiry is contemplated under Chapter IV in Section 34 to 37 of the Act. The said exercise has never been undertaken by the Authority at any point of time. There is no certificate issued under Section 38-E or 38-G of the Act in favour of Nagu Mahadu. The name of Nagu has not been entered in the final Tenancy Register of the suit land.

29. It is further submitted that Rama Ashruba has transferred his portion of land in favour of plaintiffs No. 1 and 2 by executing sale-deeds in the year 1977 and 1979. On the basis of these sale-deeds, the petitioners have acquired ownership, and are claiming possession of the suit land.

30. So far as the rejection of application which is impugned in W. P. No. 10458 of 2018 is concerned, it is contended that the injunction has been refused against the respondents based on the panchnama dated 12.12.1988, which is only a paper panchnama, no possession was handed over to the respondents, as has been observed by the Tahsildar, Basmathnagar, in his order dated 01.06.1992, in the

proceedings for entering the names in revenue record by the respondent. Therefore, the order impugned passed by the District Judge – 1, Basmathnagar in M.C.A. No. 3 of 2015 dated 06.06.2018, refusing the grant of injunction, needs to be quashed and set aside.

31. It is contended by the petitioners that, respondents started causing obstruction and interference to their peaceful possession over the suit land in capacity of legal heirs of Nagu who were the protected tenant. The protected tenant were allegedly dispossessed by the land-lord. Therefore, they filed proceedings for restoration of possession under Section 32(1) of the Hyderabad Tenancy and Agricultural Lands Act.

On the basis of the order passed by the Competent Authority under the Hyderabad Tenancy and Agricultural Lands Act, the defendants started claiming possession over the suit land. Therefore, the petitioners were constrained to file suit for protecting their possession over the suit land. During the pendency of the suit, the application for temporary injunction came to be rejected. The petitioners have challenged the order passed by the District Judge – 1, Basmathnagar on the ground that the present petitioners were not party to the any of the proceedings initiated at the instance of Yogaji Balaji, therefore, none of the orders are binding on them.

32. Only upon getting knowledge about the orders passed by the Tahsildar dated 16.04.1979, they have challenged the said order which is set aside by the Deputy Collector. The petitioners have challenged it on the ground that Nagu, was one of the witness to the sale-deed executed by the owner and if the original land-lord sells the land to the third party with the consent of the owner, the tenant loses his right. According to him, during his lifetime, Nagu has never challenged the execution of said sale-deed in favour of petitioner No. 2. Therefore, the legal heirs of the protected tenant Nagu are precluded from challenging it.

33. Per contra, learned Advocate Mr. Joshi appearing for the respondents vehemently opposed the writ petitions. The Writ Petition No. 10458 of 2018, has been opposed by the respondents by filing elaborate reply-affidavit. Considering the history of litigation in all these three writ petitions, it is the contention of the respondents No. 1 and 2 that petitioners have no right or locus to challenge the status of respondents as 'tenant' for two reasons :-

- (1) In proceedings between the land holder and tenant under Section 32(1) of the Act, the status of respondents as protected tenant has been adjudicated and has already attained the finality.

- (2) The owner of the land has never challenged the judgment and order dated 16.04.1979, passed by the Tahsildar wherein the Tenancy Right of the respondents is adjudicated.

It is contended that the so far as the objection to the maintainability of proceedings on the ground that, their predecessor-in-title Nagu was never declared as Protected Tenant is concerned, it is totally incorrect. A notification, as contemplated under Section 38-E of the Act in respect of the suit land has been issued on 01.02.1957. Hence, from the day on which the said notification was issued, the land vests with the tenant who acquires statutory rights.

34. According to him, in fact, the petitioners have no right or locus standi to challenge the status of Nagu as 'Protected Tenant'. The original owner Mirza Asadulla Baig had already filed proceedings under Section 19 of the Act for surrender of tenancy rights of Nagu which has been rejected. The land holder has not raised any challenge to the rejection order. Hence, it has attained finality and it is binding on the owner as well as subsequent purchaser who steps into the shoes of the owner.

35. The learned Advocate Mr. Joshi contends that though the petitioners are denying the status of respondents, as 'Protected

Tenant's filing of proceedings by the land owner, against Nagu for surrender of tenancy right under Section 19 of the Act, itself is an admission of tenancy and acceptance of status of Nagu as 'Protected Tenant'.

He further submits that the proceedings which were initiated by the respondents, under Section 32(1) of the Act, have attained finality up to this Court. The predecessor-in-title of the petitioners Rama Ashruba, inspite of being a party to the said proceedings has failed to bring on record the sale-deeds executed in favour of the petitioners, the proceedings under Section 32(1) of the Act were filed on 18.03.1975. The petitioners were not in picture on the said date. They have purchased the portion of the suit land during the period of 1977 to 1979. Hence, the petitioners do not have any right to challenge the said order.

36. Learned Advocate for the respondents further contends that the petitioners have not challenged the status of respondents as 'Protected Tenant' till date. As regards the objection raised by the petitioners, about maintainability of proceeding under Section 32(1) of the Act, without resorting to remedy under Section 8 of the Act for declaration of status of protected tenant is concerned, it is submitted that there is no bar under Section 32 of the Act to decide the status of

a tenant in the same proceeding. Reliance is placed by the learned Advocate for respondents on the judgment of the Hon'ble Supreme Court in case of **Vallabhai Nathabhai Vs. Bai Jivi and Ors. (AIR 1969 SC 1190)** in support of maintainability of proceedings under Section 32 of the Act.

37. It is submitted that the right of tenant relates back to the date of notification, therefore, the sale-deed executed after date of notification are void-ab-initio and not binding. The right of the respondents as legal heirs of the original Protected Tenant is heritable, in view of Section 40 of the Act. The name of Nagu as Protected Tenant had appeared in record of right i.e. 7/12 extract, *khasra-pahani* patrak from 1951 till 1974 i.e. till his death. The above said entries of the record of rights, were never challenged by anyone including the petitioners. Since the sale-deeds were executed during the pendency of the proceeding under Section 32(1) of the Act, the sale transactions executed during the pending proceedings are always subject to the outcome of the decision. The respondents herein have been handed over possession of the suit land on 12.12.1988, by following due procedure of law after drawing the panchnama and executing *taba-pavti* in presence of the petitioners. Though the petitioners have disputed it, there is nothing placed on

record to controvert the fact of handing over possession on 12.12.1988.

38. It is urged by the learned Advocate for respondents that right of a protected tenant can be brought to an end, by the owner, only by adopting two methods – (1) by surrender; and (2) by termination of tenancy.

39. In the present case, the proceedings initiated by the land owner Mirza Asadulla Baig, for surrender of tenancy were already rejected and there was no challenge to it. Hence, the writ petitions filed by the petitioners deserves to be dismissed.

40. I have heard respective parties and I have gone through the contents of writ petition as well as documents placed on record. Upon perusal of the various orders which have been placed on record, it is evident that all the parties to the proceedings in all the three writ petitions are common. The un-controverted facts of case are as follows :

- (1) Agricultural land bearing Gat No. 134 ad-measuring 13H - 62R situated at village Bhendegaon, Tq. Basmathnagar, Dist. Hingoli was owned by one Mirza Asadulla Baig.
- (2) One Nagu Mahadu Khandare was cultivating the said

land for the owner who resided at Hyderabad. It is claimed that said Nagu was 'Protected Tenant' over the land Sy. No. 72/1 to the extent of 19A 9G.

- (3) The owner Mirza Asadulla Baig filed application and tried to get the land surrendered in his favour on 04.09.1973. On the same day, he also obtained thumb impression of tenant Nagu as an attesting witness to the sale-deed dated 04.09.1973 executed by him in favour of Rama Ashruba Gaware.
- (4) The application for surrender of tenancy was rejected by the Competent Authority. The protected tenant Nagu died sometime in the year 1974.
- (5) The legal heirs of Nagu i.e. his sons and wife were dispossessed.
- (6) Upon dispossession, the legal heirs of Nagu filed proceedings under Section 32(1) of the Act for restoration of possession of land Sy. No. 72/1 to the extent of 19A - 9G. Mirza Asadulla Baig, Rama Ashruba Gaware and Yogaji Balaji were the parties to the said proceedings.
- (7) The Naib Tahsildar passed the order on 16.04.1979, restoring the possession of the land to the legal heirs of Nagu.
- (8) Rama Ashruba Gaware sold the 5 Acre land out of Gat No. 134 to Balaji Yogaji Borade on 08.11.1977.

- (9) Rama Ashruba also sold 80R land out of Sy. No. 72/1 to Jijabai Mahadeorao Vyawhare on 10.03.1978 and thereafter, on 18.03.1978, Noorunisa Begum w/o Mirza Baig sold 3H -53R land out of Gat No. 134 to Balaji Yogaji Borade.
- (10) On 18.08.1979, Darubai Rama Gaware sold 20R land out of Gat No. 134 to Yashwanta Yogaji Borade.
- (11) Yogaji Balaji Borade filed appeal against order passed by Tahsildar dated 16.04.1979 before Deputy collector which came to be dismissed on 31.01.1981. Yogaji further challenged the said order in Revision Application before MRT. Since there was delay, the Revision application was dismissed by the MRT on the ground of limitation on 24.02.1984.
- (12) Yogaji Balaji further challenged the judgment and order passed by MRT in Writ Petition No. 464 of 1984 before this Court which was dismissed by this Court on 27.08.1984.
- (13) After the order came to be passed by this Court in W. P. No. 464 of 1984, the petitioner No. 1, 2 and 5 in W. P. No. 1402 of 1998 have filed Regular Civil Suit No. 351 of 184 seeking declaration that judgment and order passed by the Tahsildar dated 16.04.1979, be declared as illegal and not binding on the petitioners. However, it was subsequently withdrawn on 13.07.1988.

- (14) In the meanwhile, after six years of passing of order in W. P. No. 464 of 1984, the petitioners challenged the judgment and order dated 16.04.1979 before the Deputy Collector (Land Reforms), Parbhani which was allowed by the Deputy Collector vide order dated 13.11.1987 ignoring the finality attained by the said order up this Court in W. P. No. 464 of 1984.
- (15) The order of the Deputy Collector dated 13.11.1987 was challenged by legal heirs of Laxman, Chimaji and Rukhminbai before the MRT. The Member, MRT has allowed the Revision filed before him vide its order dated 08.12.1997.
- (16) The order passed by the MRT dated 08.12.1997 is subject matter of Writ Petition No. 1402 of 1998.

41. In view of the above undisputed facts and submissions of the respective parties, the following question arises for considering of this Court :-

- (I) Whether the order dated 16.04.1979 which is confirmed up to this Court in Writ Petition No. 464 of 1984 would operate as *res judicata* against the petitioners for raising the challenge to the order of Naib Tahsildar dated 16.04.1979 that has attained finality, though were not party to the proceedings ?

42. The petitioners have invoked the powers of this Court under Article 227 of the Constitution of India while raising challenge to the afore-mentioned order. It is trite law that, while exercising the powers of under Article 227 of Constitution of India, Court cannot act as an appellate body to re-appreciate the evidence. The Court can interfere with the decision when the findings are perverse; erroneous on account of non-consideration of material evidence; conclusions which are contrary to the evidence; based on inferences which are not permissible under law; or where there is jurisdictional error committed by the subordinate Court; and failure to adhere to the principle of natural justice. The three orders assailed in three different writ petitions will have to be assessed, within the limits of powers circumscribed under Article 227 of Constitution of India.

43. The petitioners herein have purchased the land from Rama Ashruba during the pendency of proceedings under Section 32(1) of the Act. Yet, neither Rama Ashruba, nor the petitioners have brought to the notice of the Naib Tahsildar about the execution of sale-deed, though they were aware about the proceedings which were pending before the Tahsildar. The Tahsildar, while deciding the proceedings under Section 32(1) of the Act, has framed the issue 'whether Nagu Mahadhu was the tenant in the suit land and whether

the proceedings are filed within period of limitation ?'

44. While recording the findings about the status of Nagu as 'Protected Tenant', the statements of witnesses have been recorded and only after going through the record and evidence produced by the parties, the Naib Tahsildar has recorded a finding that Nagu was a Protected Tenant of land Sy. No. 72/1.

45. The application for surrender of tenancy rights of Nagu has been rejected. After the death of Nagu in the month of June' 1974, respondents were dispossessed, therefore, they have filed the proceedings on 18.03.1975, under Section 32(1) of the Act, which is well within the period of limitation i.e. within two years as provided under the Act. Thereupon, an order came to be passed by Naib Tahsildar, granting restoration of possession to the applicants.

46. According to the petitioners, 'Naib Tahsildar' was not competent to exercise the powers under Section 32(1) of the Act, since those powers are to be exercised by the Tahsildar. The objection raised by the petitioners, would not be maintainable in view of Section 89-A of the Act, which provides for distribution of business amongst Tahsildar, Naib Tahsildar empowering them to exercise the powers of Tahsildar, by State Government.

47. The respondents who are legal heirs, inherit the right as a 'Protected Tenant' as provided under Section 40 of the Act. The petitioners, have relied upon upon the decision of this Court in **Kerba Bhivaji Shinde Vs. Salubai Nagorao and Ors. [1983(2) Bom. C. R. 606]** to contend that, application under Section 32(1) of the Act, is not maintainable for restoration of possession against third person. If at all, the tenant is claiming possession against the person who is not the owner of land, he has to file application under Section 98 of the Act.

In the present case, fact remains that the land-holder Mirza Asadullah Baig, was very much party to the proceeding from whom the recovery of possession was claimed by the respondents. Even otherwise, the sale made in favour of Rama Ashruba, by the land holder, of the tenanted land was contrary to Section 48 of the Act, making the sale invalid.

48. After the decision in Writ Petition No. 464 of 1984, the petitioners have challenged the order passed by the Naib Tahsildar dated 16.04.1979, before the Deputy Collector (LR), Parbhani. The Deputy Collector, ignoring the orders that have attained the finality up to this Court, has allowed the Appeal and set aside the order of

Tahsildar dated 16.04.1979, vide order dated 13.11.1987.

49. Though it is claimed by the petitioners that the order passed by the Deputy Collector dated 13.11.1987, has attained finality, yet record discloses that it was challenged in Revision before the MRT, Aurangabad which was heard and decided on 08.12.1997 and dismissed on the ground that the proceedings under Section 32(1) of the Act have attained finality up to the High Court which cannot be reopened. Hence, the said order is binding upon all the parties.

50. The Member, MRT, has rightly taken into consideration the finality of the orders passed in earlier round of litigation. Though the petitioners were not party to the said proceeding, however, fact remains that their predecessor was very much party to the proceedings.

51. In fact, the proceedings filed by the original land holder against Nagu – the protected tenant for surrendering Tenancy Right was rejected by the Tahsildar in the year 1973 itself. The original owner has never challenged the said order before any higher Court or Authority. The entries in the revenue record i.e. *khasra-pahani-patrak*, and 7/12 extract reflecting name of Nagu as ‘Protected

Tenant' from 1951 to 1974 i.e. till his death, were never challenged by anyone including the original owner. This position is not disputed by the petitioners. Since the petitioners are stepping in the shoes of original owner, the revenue entries are binding on the petitioners'.

52. In the conspectus of the matter, I do not find any perversity in the order dated 08.12.1997, passed by MRT, Aurangabad, which is impugned in the Writ Petition No. 1402 of 1998. The Member, MRT has rightly observed the dispute which had attained finality cannot be re-opened at this stage. While making observations upon the order passed by the Deputy Collector, it is held that the order passed by the Deputy Collector, is without taken into consideration earlier orders.

53. As far as the order under challenge in Writ Petition No. 1582 of 1990 is concerned, the petitioners have assailed the directions issued by the Tahsildar, to the Revenue Inspector to hand over the possession, in view of order and panchnama made by the Inspector.

On the basis of order passed on 16.04.1979, the Tahsildar had directed to hand over the possession of the land to the respondents, accordingly, the possession was handed over to the

respondents on 09.12.1988 by executing a panchnama dated 12.12.1988. Though the petitioners are disputing the panchnama, however, the petitioners have not produced any evidence and prove it. The order directing execution dated 09.12.1988 was challenged before the Collector, by Balaji Yogaji and others, which came to be dismissed on 07.05.1990.

54. The order passed by the Collector, Parbhani dated 07.05.1990, refusing to interfere with the order passed by Tahsildar has been challenged by the petitioners on the ground that they have purchased the said land independently under the registered sale-deed and they are not claiming title through their father Yogaji. Therefore, the decision against Yogaji would not bind the petitioners.

55. I have gone through the order passed by the Collector, Parbhani, it is categorically held by the Collector, Parbhani that tenancy proceedings in respect of the land in dispute are initiated after more than 10 years and the proceedings have been finally decided by the High Court. Therefore, causing any interference in the order, which has attained finality, would amount to questioning the orders of the High Court. I do not find any perversity or illegality in the findings recorded by the Collector, Parbhani. The Collector, Parbhani, has rightly taken into consideration the order passed by the

Naib Tahsildar on 16.04.1979, the subsequent orders.

56. Though the petitioners have challenged the directions issued by Tahsildar to Revenue Inspector in Writ Petition No. 1582 of 1990, the order passed by the Collector dated 07.05.1990, from the perusal of prayers made, it does not appear to have been assailed in the writ petition. Hence, considering that the order dated 07.05.1990 is not challenged and it is still intact and binding on the parties. The challenge to W. P. No. 1582 of 1990 fails. The common ground of challenge in all the writ petitions is that the petitioners were not party to the proceedings in the earlier round of litigation, though the the sale-deeds were subsequently executed in their favour during the pendency of proceedings. They were very much aware about the proceedings initiated by the respondents herein. Lack of knowledge cannot be a ground for the petitioners to challenge it belatedly, since the proceedings were all throughout represented by their father Yogaji Balaji, though in his personal capacity.

57. The matter in issue in previous proceedings and the proceedings filed by the petitioners, is the order passed by the Naib Tahsildar dated 16.04.1979. Therefore, there is no substance in the contention of the petitioners that, matters in issue in both the proceedings, are not one and the same.

58. The defence about 'lack of knowledge' cannot be a ground for belated challenge to the order. Though the petitioners were very much aware about the rights of the respondent as 'Protected Tenant', they have purchased the land from Rama Ashruba. Therefore, the principle of *lis-pendens* would be applicable to the present case. Petitioners have purchased the land which they were aware was subject matter of proceedings under Section 32(1) of the Act.

59. In a recent decision of the Hon'ble Supreme Court in case of **M/s Siddamsetty Infra Projects Pvt. Ltd. Vs. Katta Sujatha Reddy & Ors. [(2024) Live Law (SC) 870]**, applicability of doctrine of *lis pendens* is explained. Para 45 and 46 of the judgment reads thus :

"45. Section 52 of the Transfer of Property Act 1882 states that during the pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings. The explanation to the provision states that for the purposes of the Section, the pendency of a suit or proceedings shall be deemed to commence from the date of the presentation of the plaint or institution of the proceeding in a Court, and shall continue until the suit or proceeding is disposed by a "final decree or order" and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of the expiry of any period of limitation. Section 52 of the Transfer of Property Act reads as follows:

"52. During the pendency in any Court having

authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.-- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

(emphasis supplied)

46. The following conditions ought to be fulfilled for the doctrine of lis pendens to apply:

- a. There must be a pending suit or proceeding;*
- b. The suit or proceeding must be pending in a competent court;*
- c. The suit or proceeding must not be collusive;*
- d. The right to immovable property must be directly and specifically in question in the suit or proceeding;*
- e. The property must be transferred by a party to the litigation; and*

f. The alienation must affect the rights of any other party to the dispute.”

All the conditions laid down in para 46 of the judgment (cited supra) are fulfilled in the present case. In view thereof, the petitioners, who are subsequent purchasers are bound by the orders, passed in the proceedings by the Tahsildar.

60. Though the petitioners are claiming that principle of *res judicata* would not be applicable in their case on the ground that they were not party to the proceedings which had attained finality. One important aspect, that cannot be ignored, while considering the application of principle of *res judicata*, is that predecessor-in-title of the petitioner alongwith father of petitioners were party to the proceedings which has attained finality.

61. A useful reference can be made to the judgment delivered by the Hon'ble Apex Court wherein guiding principles have been laid down for deciding application under Order VII Rule 11(d) of the Code of Civil Procedure in the reported judgment of **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Ors. [(2021)9 SCC 99]**. Para 20 of the judgment read thus :

“20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows :

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit;

(iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and

(iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused."

62. Clause (iii)(iv) of the guiding principles summarised by the Hon'ble Apex Court would squarely cover the case of the petitioners. In the matter in hand, the order under challenge is the same, the predecessor-in-title of petitioner was a party to those proceedings; proceedings have attained finality, hence, taking into consideration that the matter in issue in previous proceedings and subsequent proceedings is one and the same, the principle of '*res-judicata*' will apply to the case of petitioners.

63. The tenancy of the respondents could be determined by the landlord either by way of surrender or termination of tenancy. Though the land-lord had filed proceedings for surrender of tenancy against the tenant, the same came to be rejected by the Competent Authority. Considering that during the subsistence of the tenancy of the respondents herein, the ownership of the land by the land owner was transferred is contrary to the object and scheme of the Act. Section 48(1) of the Act imposes restriction on the land holder for sale of the tenanted land, the owner has to get the price fixed and has to offer to the tenant; any sale transaction made in contravention of this provision is declared as invalid under Section 48(7) of the Act. Hence, the sale-deeds executed in favour of the petitioner, being contrary to the provision of the Act, are illegal and not binding.

64. The Hyderabad Tenancy and Agricultural Lands Act, 1950, is a beneficial legislation and enacted especially for protecting the rights and interest of tenant. The legislation has taken care to safeguard the rights and interest of tenant on the assumption that there was every possibility that, the owner being dominant, would always be in a position to take undue advantage and deprive the tenant from their legitimate rights. In the present case, the owner of the land has dispossessed the legal heirs of Nagu, therefore, they

have filed proceedings under Section 32(1) of the Act. The owner has sold the land to Rama Ashruba and Yogaji Balaji, in order to frustrate the claim of protected tenant, which is not at all permissible in view of the provisions of the Act, which safeguard the rights of the protected tenant, once the notification is issued under Section 38-E of the Act. Since the petitioners are the subsequent purchasers of the land, such transfer is contrary to the provisions of the Act, the transaction is void-ab-initio.

65. The subject matter of Writ Petition No. 10458 of 2018 is, limited to the extent of order whereby the injunction in respect of Sy. No. 72/1 is rejected. The petitioners have been refused injunction in respect of land Sy. No. 72/2, in Gat No. 134. It is settled position of law that it is within discretionary powers of the Court to grant or refuse injunction on the basis of evidence that irreparable loss would be caused, if relief is denied.

66. The subject matter of M. C. A. No. 3 of 2015 is the order passed by the Jt. Civil Judge, Junior Division, Basmathnagar dated 02.01.2015. The Civil Judge Junior Division has rejected the application (Exh. 5) in R. C. S. No. 165 of 2014 filed by the petitioners, upon considering the chequered history of litigation between the parties. The Court has rejected it on the ground that

after handing over possession to the respondents on 12.12.1988, there is no protection to the possession of plaintiff over the suit land, therefore, he did not find any immediate possibility of loss of possession, if application is not allowed. The application is partly allowed vide order dated 06.06.2018 granting interim protection only to the extent of Sy. No. 72/2 in Gat No. 134.

67. The undisputed fact which is observed by the District Judge – 1, Basmath, is that R.C.S. No. 20 of 1990 was filed by the defendants for perpetual injunction in respect of land Sy. No. 72/1. Interim injunction was granted in favour of the defendants. However, the suit came to be dismissed for want of prosecution by order dated 15.11.2011. In view of the relief granted to defendants, which operated for considerable period, a prima facie opinion is formed by the District Judge. The District Judge has also recorded a finding that prima facie material shows that the defendants were put in possession of land Sy. No. 72/1 ad-measuring 7H – 78R of village Bhendegaon. Therefore, the M.C.A. No. 3 of 2015 was partly allowed by the Trial Court granting interim injunction only to the extent of Sy. No. 72/2 and refusing to grant injunction in respect of land Sy. No. 72/1 of Gat No. 134.

68. As far as rejection of application (Exh. 5) is concerned, it

is for the plaintiffs to prove prima facie case. Though it claimed by the plaintiff that panchnama and taba-pavti are false and bogus, the plaintiffs have failed to produce evidence to that effect.

69. In a recent Full Bench decision of this Court in case of **UTO Nederland B. V. And Anr. Vs. Tilaknagar Industries Ltd. (Appeal No. 66 of 2012)**, while answering the Reference, following observations are made by this Court in para 31, which reads thus :

“31. For the aforementioned reasons, the questions referred to us are answered as follows:

*(i) The Division Bench decision of this Court in **COLGATE PALMOLIVE COMPANY (SUPRA)** sets out the correct principle of law. An order of temporary injunction does not cease to be a discretionary order merely because the learned motion Judge did not find any prima facie case and refused to grant interim restraint order. It correctly holds that in the matter of temporary injunction, the Court does not adjudicate on the subject matter or any part of it on merits and considers the application for temporary injunction in the light of well-known principles and exercises its discretion weighing all relevant consideration without any expression of opinion on merits of the matter. The Division Bench has rightly held that the decisions of this Court in **HIRALAL PARBHUDAS (SUPRA)** and **M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA)** have no relevance while deciding an appeal arising out of an order of injunction.*

*(ii) The scope and ambit of an appeal from an order passed by the trial Judge has already been delineated by the Supreme Court in **WANDER LTD. (SUPRA)**, **SHYAM SEL AND POWER LIMITED (SUPRA)** and **RAMAKANT AMBALAL CHOKSI (SUPRA)**. In view of aforesaid enunciation of law by Supreme Court, it is evident that the*

appellate court will not interfere with exercise of discretion of Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. The Appellate Court while deciding an appeal, has to examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law and the appellate Court may, in a given case, has to adjudicate on facts even in such discretionary orders.

70. In view of the observations made by this Court upon perusal of the order impugned in M. C. A. No. 3 of 2015, the District Judge – 1, Basmath, after taking into consideration the various orders passed in the proceedings, after forming his prima facie opinion about the relief prayed for, has exercised his discretionary powers, and passed a reasoned order. I do not find any arbitrariness or perversity in the order.

71. In view of the observations herein above, I do not find that the petitioners have made out any case in all the three writ petitions warranting interference by this Court in its jurisdiction under Article 227 of the Constitution of India, more so, on the touchstone, the tests laid down by the Hon'ble Apex Court in a Five Judges Constitution Bench in case of **Rajendra Diwan Vs. Pradeep Kumar Ranibala and Ors.** [(2019)20 SCC 143], wherein the Constitution Bench has very precisely explained the scope of powers

exercised under Section 227 of the Constitution of India, more particularly, in paragraphs No. 85 and 86, which reads thus :

“85. It is true, that in L. Chandra Kumar (supra) this Court held that Tribunals constituted under Articles 323A and 323B of the Constitution were subject to the writ jurisdiction of the High Courts, within whose jurisdiction they were located, as noted by this Court in H.S Yadav (supra).

86. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised “in the cloak of an appeal in disguise”.

72. It is trite law that High Court cannot reassess and reanalyse the evidence and/or materials on record. Merely because another view is possible, the decision which is under challenge cannot be reversed, unless there is some jurisdictional error or order impugned is perverse.

73. After going through the orders as observed herein above, the petitioners have failed to make out any ground for interference in the orders under challenge. Hence, all the three writ petitions deserve to be dismissed. Resultantly, all the civil applications also stand disposed of. Rule stands discharged.

74. In view of the dismissal of the writ petitions, concerned Authorities shall take necessary steps in furtherance thereof.

[MANJUSHA DESHPANDE, J.]

Omkar Joshi